

REMARKS/ARGUMENTS

Claims 1, 6-9, 17, 18, 20 and 21 are rejected under 35 U.S.C. §103(a) as unpatentable over the patent to Perkins (US 6,234,485) in view of the patent to Webb (US 5,685,774) and the patent application to Au-Yeung (US 2001/0040345). Claims 5 and 19 are rejected under §103(a) as unpatentable over the Perkins patent in view of the Webb patent and the Au-Yeung application, and further in view of the patent to Wirth (US 5,845,906). Claims 10-15 and 22-31 have been rejected under §103(a) as unpatentable over the Perkins patent in view of the Webb patent and the Au-Yeung patent application and further in view of the patent to Moody (US 5,489,101). Claim 16 is rejected under §103(a) as unpatentable over the Perkins patent in view of the Webb patent and the Au-Yeung patent application and further in view of the patent to Malcolm (US 5,794,934).

Independent Claims 1, 22 and 31 have been amended, while independent Claim 30 has been cancelled. Reconsideration of the rejection of these amended independent claims, as well as dependent Claims 5, 7-21, 23-24, 27-29, and 32, as well as consideration of new dependent Claims 33-35, is respectfully requested.

With reference now to Paragraph No. 8 of the Office Action, Claims 1 and 5-32 were rejected under 35 U.S.C. §112, second paragraph, as being incomplete for many essential steps. More particularly, a finding is made by the Examiner that steps directed to the utilizing of cards dealt to the dealer need to be recited. Applicants respectfully disagree since Applicants are committed to

provide claims that are broad in scope and need not be limited to a particular use. Notwithstanding the fact that the claim language complies with § 112, Applicants have amended independent Claims 1 and 31 to recite that determinations are made as to whether the dealer hand, is qualified, beats at least the first player hand. Accordingly, such claims recite a “purpose” of cards dealt to the dealer. The language found objectionable by the Examiner has been deleted from independent Claim 22.

With respect to the substantive rejections of the remaining claims, the Examiner relies on the newly cited Perkins patent. The Perkins patent discloses a card game that uses one common card. However, as illustrated in Figs. 2A-2C and described in Columns 3 and 4, the method of play is substantially different than that of the present invention. Specifically, after the ante bet, the player is dealt only two cards and the common card is also dealt. To obtain a fourth card, the player must make a bet wager. Likewise, to be dealt a fifth card (4 dealt cards plus the common card) the player must make another bet wager. Similarly, to receive a sixth card, the player must purchase that card, provided that the player has already paid an insurance fee when he made his ante bet. On the other hand, the present invention requires a substantially different methodology related to the players that continue playing the game and have an opportunity to realize a winning hand.

Referring to Claim 1, as further amended, it calls for, among other things, dealing by the dealer five cards that are face down to a first player. Significantly, this claim requires that each player of the number of players that makes the ante wager is dealt five cards. In contrast, the Perkins

card game is played substantially differently since none of the players is dealt five cards after making an ante wager. Such a player who makes the ante wager bet is dealt only two cards. In order to continue to be dealt a third card and possibly a fourth card, the player must make two bet wagers, one bet wager before receiving each of the third and fourth cards. Furthermore, to be dealt a fifth card, the player must have paid an insurance fee. None of these complexities is found or introduced into the present invention, as recited in Claim 1.

Claim 1 also states that the bet wager is made by the first player after the five cards are dealt to the first player and the one community card is dealt. In contradistinction, as just pointed out, the Perkins game requires that the bet wager be made after second cards are dealt to the players and before any possible third card is dealt to one or more of the players. Accordingly, the Perkins game requires more bets and results in more time being spent in making such decisions/wagers associated with possible third and fourth cards being dealt to one or more of the players.

The Webb patent does not teach or suggest these patentable features, which are not found in the Perkins patent. The Webb patent does disclose the feature related to a player wagering against a dealer and/or a payout schedule based on card ranks. On the other hand, the Webb game does not involve or require use of one community card. Rather, in one embodiment, it teaches away from the use of a community card by utilizing a "wild card" that is dealt to each player and which wild card can be used by the player in any number of games.

The prior art references previously relied on including the Au-Yeung patent application continue to be deficient in rendering obvious the patentable features of the present invention, as pointed out in the Amendment and Response to the previous Office Action.

Applicants have made a sincere and good faith effort to place Claim 1 in condition for allowance in light of the new prior art relied upon by the Examiner. Applicants respectfully submit that the combination of steps and associated features of Claim 1 are novel and non-obvious and, in particular, there is no motivation in the prior art references to try and arrive at the claimed invention. Indeed, the teachings of all prior art references are characterized by their unique and special ways for implementing various poker card games. Any attempt to meet the terms of Claim 1 is merely unjustified picking and choosing of features/steps found in the prior art, with no persuasive basis to combine them so that they somehow render Claim 1 obvious. Based on such reasoning, Applicants further submit that such consideration of Claim 1 renders it allowable over any combination of the prior art.

Independent Claim 31 has also been amended to include these same features. More specifically, each player of the number of players that makes the ante wager is dealt five cards. The bet wager is made by the first player after the five cards, as well as the first and second community cards are dealt. These patentable requirements are not found in the Perkins patent, nor is the combination thereof taught or suggested by any of the prior art references, or any combination(s)

thereof. Therefore, Claim 31 should be considered and found allowable over any of the prior art references.

With reference next to independent Claim 22, it recites paying the first player a predetermined amount when the first player makes the bet wager and the first community card is a predetermined card. The first player is also paid this predetermined amount when the first player does not make the bet wager and the first community card is the predetermined card. As urged in the previous Amendment and Response, the card game in the Moody patent lacks this dual or conjunctive requirement related to the first community card. That is, a predetermined amount can be paid even when there is no bet wager. In contradistinction, the Moody card game requires that a bet wager be placed by the player in order to become eligible for the progressive or side jackpot. Furthermore, Claim 22 continues to recite that the first player decides on his own to make the community card wager. The Examiner argues that: "Determining how the community card wager is placed... is simply a casino business decision which is always obvious in the art." Applicant respectfully disagrees with that unsupported conclusion. Each casino card game involves some business decisions related to payouts over time and speed of play. Casinos seek to make a profit that is optimized by playing more hands over a unit of time and reducing the amounts of the payouts. On the other hand, how this is implemented or can be achieved is subject to substantial and wide variation and diversification when it comes to how the card games are played. This is best evidenced

by the large number of prior art references that show the significant number of games implemented that are sensibly trying to meet these business objectives. Hence, the Examiner's argument would result in no card game being patented because each new and non-obvious card game includes the "house" of being played, such as the number and how cards are dealt and the amount of the wagers and the methodology associated with placing the wagers. Patentability is definitely based on such differences, which at their core involve business considerations related to profit making and game popularity.

Moreover, Claim 22 requires the feature that the ante/bet wager payouts are determined using at least the first community card and no other community card. This patentable limitation emphasizes a key aspect of the present invention in which ante/bet wager payouts are a function of the first community card. In contrast, the Moody patent, as well as the other prior art references, lack any relationship between such payouts and a community card. In point of fact, the jackpot payout taught in the Moody patent is based on an amount or percentage of the ante wager made by the player, not a payout schedule. Support for such claim language is found in the patent application starting on page 10 and referring to the ante/bet payout table where a single community card is used. As indicated on page 12, the ante/bet payouts change when there are two community cards or three community cards. Again, no business decision dictates that the payout table for ante/bet wagers be determined using the first community card and not other community card.

Application No. 10/817,011

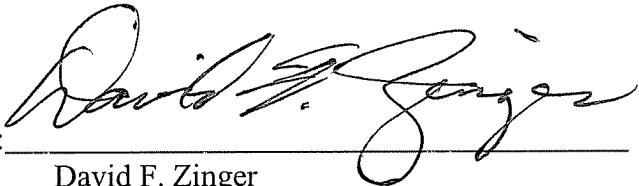
Like independent Claims 1 and 31, it is respectfully submitted that Claim 22 is in condition for allowance and should be considered. None of the prior art, whether taken singly or in combination, teaches or suggests the novel and non-obvious combination set out in Claim 22.

The remaining dependent Claim 5, 7-21, 23-24, 27-29 and 32, as well as new Claims 33-35, depend from one of these independent claims and are patentable for at least the foregoing reasons given in connection with their independent claims.

A sincere effort has been made to place the application in condition for allowance and avoid the necessity of an appeal. It is respectfully requested that all claims be considered and be found allowable.

Respectfully submitted,

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